

28.09.2022

DL-8

(PP)

Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 21544 of 2022

Dr. Biswanath Das

Vs.

Union of India & Ors.

Mr. Achyut Basu,

Ms. Punam Basu

....for the petitioner.

Mr. D. N. Ray

....for the respondents/Union of India.

In this writ petition, the petitioner has challenged reconsideration of the transfer order dated June 22, 2022 by the Impugned order dated September 12, 2022 which has been purportedly passed in compliance of the order dated August 17, 2022 passed by a coordinate Bench of this Hon'ble High Court in WPA 18109 of 2022. By the said order dated August 17, 2022, a coordinate Bench of this Court directed the Director General, Border Security Force (in short "BSF") to consider afresh the representation of the writ petitioner dated June 22, 2022. Upon consideration of the representation of the petitioner, the authority concerned passed the Impugned order, the relevant portion of which is quoted hereinbelow:-

"As per rule 18(2) of the Border Security Force Tenure of posting and deputation Rules 2000, the Director General, or the officer as may

be empowered by him, is empowered to order transfer of all personnel, anywhere, in the force, including turnover from/to static formations, and on extreme compassionate grounds. These rules have been subsequently amended and incorporated with Rule 19, vide Gazette of India, Notification dated 04.07.2002 (GSR-264), stipulating "Power to extend or reduce tenure of a member of the Force in certain cases, where the Director General, of the Force, is satisfied that in the interest of the Force or in the cases of hardship, it is necessary or expedient so to do, he may, by order and for the reasons to be recorded in writing extend or reduce the tenure of a member of the Force.

Whereas, BSF being an Central Armed Force, Members of the Force are liable to serve anywhere in India or abroad. BSF Act Section 4(2) provides that the conditions of service of the members of the Force shall be such as may be prescribed. Any personnel appointed to any category of post under BSF Act & Rules is liable to serve anywhere in India or abroad. The petitioner, therefore, cannot stake claim for continuation in 153 Bn BSF or a posting at the place of his choice as a matter of right."

Mr. Basu, learned counsel appearing on behalf of the petitioner submits that the main grievance of the writ petitioner that he should be exempted from the routine exercise of transfer/rotational transfer being the care giver of a child with disability was not considered at all in the Impugned order. He relies on

the office memorandum annexed at page 60 of the writ petition in support of his contention. He submits that from the disability certificate issued by the Department of Psychiatric Social Work, Institute of Psychiatry, Government of West Bengal, it appears that the child of the writ petitioner has 90% disability. She has been diagnosed with Schizophrenia (as per ICD 10). Without consideration of the representation and the grounds contained therein as directed by the order dated August 17, 2022 passed by the Hon'ble coordinate Bench, the respondent authorities passed the Impugned order. Such Impugned order suffers from complete non-application of mind.

Mr. Ray, learned counsel, on behalf of the respondents submits that such consideration made at paragraphs 6 and 7 of the impugned order, which is quoted hereinabove. He submits that as per Rule 18(2) of the Border Security Force Tenure of Posting and Deputation Rules, 2000, the Director General was empowered to transfer all personnel anywhere in the force.

Having considered the rival submissions of the parties and materials placed on record, this Court finds that the Impugned order suffers from total non-application of mind. The directions passed by the coordinate Bench by the order dated August 17, 2022

were not complied with. In the Impugned order, the authorities concerned have taken irrelevant consideration into account and failed to take into account relevant considerations.

In the light of the discussions above, this Court sets aside/quashes the impugned order dated September 12, 2022.

The Director General, BSF (Personnel Directorate)/respondent no.2 is directed to consider the representation of the petitioner dated June 22, 2022 afresh keeping in mind the office memorandum regarding the exemption from routine exercise of transfer/rotational transfer. The disability certificate annexed at page 42 of the writ petition is also to be considered by the respondent no.2 while passing a reasoned order. Such reasoned order shall be passed within 6 weeks from date upon giving a personal hearing to the petitioner and the same shall be communicated to the petitioner within 2 weeks of passing thereof.

Needless to mention that the transfer order dated June 22, 2022 will remain stayed till a reasoned order is passed by the respondent no.2.

Since no affidavits have been invited in the present writ petition, all the allegations contained therein are deemed not to have been admitted.

With the directions aforesaid, the writ petition, being **WPA 21544 of 2022**, is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)